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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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John E. Logan  
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September 7, 1999

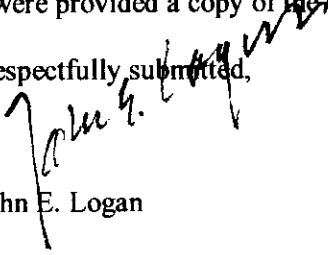
Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: Comments in Response to Public Notice  
DA 99-1647  
*In the Matter of Request of Lockheed Martin  
Corporation et al.,*  
CC Docket 92-237.  
NSD File No. 98-151

Dear Ms. Salas:

Please find enclosed for filing in the above dockets an original and four copies of  
Comments in response to Public Notice DA 99-1647 issued August 17, 1999. Also enclosed is a  
list of individuals at the Commission who were provided a copy of the Comments.

Respectfully submitted,

  
John E. Logan

Enclosures

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
Request of	)	
Lockheed Martin Corporation and	)	
Warburg, Pincus & Co. for Review of the	)	
Transfer of the Lockheed Martin Communications-	)	CC Docket 92-237
Industry Service Business from Lockheed	)	NSD File No. 98-151
Martin Corporation to NeuStar, Inc.	)	
	)	
	)	

**COMMENTS OF MITRETEK SYSTEMS  
IN RESPONSE TO PUBLIC NOTICE DA 99-1647  
(RELEASED: August 17, 1999)**

Mitretek Systems (Mitretek) submits this response to the Public Notice released by the Common Carrier Bureau requesting public comment on the August 16, 1999 amended request (Amended Request) of Lockheed Martin IMS Corporation (Lockheed Martin) for an expeditious review of the transfer of the Lockheed Martin Communications Industry Service (CIS) Business to NeuStar, Inc. (NeuStar). Lockheed's subsidiary, CIS, currently serves as the North American Numbering Plan Administrator (NANPA). Mitretek serves as the alternate NANPA.<sup>1</sup>

The Amended Request replaces the December 21, 1998, Request for Expedited Review of the proposed transfer of Lockheed Martin's CIS business to Warburg, Pincus & Co. (Warburg), which was filed pursuant to the terms of a Transaction Agreement between Lockheed and Warburg, dated December 15, 1998. Prior to the Commission's issuance of a ruling, Lockheed Martin on July 1, 1999, advised the Commission that it had terminated the

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<sup>1</sup> Third Report and Order at para. 41-47, 69-81.

December 15, 1998, Transaction Agreement to Warburg. In the Amended Request, the parties propose to transfer CIS to NeuStar.

A majority (59 percent) of the voting shares of NeuStar will be controlled by a voting trust. Warburg Pincus Equity Partnership, L.P. will have the overwhelming economic interest in the shares that are owned by the voting trust, with the NeuStar management having a small portion. Warburg will maintain a 9.9 percent voting interest beyond its interest in the voting trust. NeuStar management will have a 28.1 percent interest beyond the voting trust. Lockheed will have a three percent ownership interest in NeuStar.

### **Summary**

The issues surrounding Lockheed Martin's obligation to adhere to the neutrality standard of the law and its proposal to sell its responsibilities as the North American Numbering Administrator to Warburg have now been pending for over a year.<sup>2</sup> Since at least August 1998, Lockheed Martin has pursued selling its NANPA responsibilities and those related to local number portability administration (LNPA) in the seven regions throughout the country.

Lockheed Martin's December 1998 filing was its first proposal to sell the NANPA responsibilities to Warburg. By its own admission, it has amended that request a number of times. It has undertaken numerous *ex parte* discussions with Commission staff, all in an effort to respond to the lack of neutrality of Warburg, as the record is clear that it holds substantial

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<sup>2</sup> On August 11, 1998, Lockheed Martin announced the creation of its new Telecommunications Service Business, [www.lmco.com](http://www.lmco.com). On September 20, 1998, it announced its intention to acquire Comsat Corporation. On October 22, 1998, Lockheed advised the Commission that because of its acquisition of Comsat, and in order to adhere to the neutrality standard required of the NANPA, it intended to sell its NANPA responsibilities. On December 21, 1998 Lockheed Martin submitted its first proposal to sell the NANPA responsibilities to Warburg.

financial interests in telecommunications industry entities.<sup>3</sup> The neutrality standard -- the obligation not to be aligned with any segment at the telecommunications industry -- is a core responsibility of the NANPA. Lockheed Martin and Warburg's amended request is a result of the Commission not approving its previous proposal.

The Amended Request fails to meet the crucial elements of neutrality demanded of the NANPA. Through the many iterations submitted during the past year, the debate has moved from the fundamental responsibilities of the NANPA to administer phone numbers in a manner that in reality and perception reflect its public trust obligations, to a series of purported structural safeguards that dilute these responsibilities in order to fit the self-interest of the incumbent and its proposed buyer. The Amended Request embarks the Commission on an expanded oversight effort that diverts its resources and eliminates the neutrality standard encompassed by the public interest. The Commission should return to this essential precept. The Amended Request should be rejected. Mitretek Systems should be designated the North American Numbering Administrator.<sup>4</sup>

**Warburg's Proposed Ownership Structure Ensures its Control of NeuStar. Its Substantial Telecommunications Holdings Violate the Neutrality Standard.**

Under the amended request, 59 percent of NeuStar shares will be held in trust on behalf of Warburg (54 percent) and the management selected by Warburg (5 percent) (Warburg/Management trust). Warburg will hold 9.9 percent of NeuStar shares outright, NeuStar management 28.1 percent, and Lockheed Martin 3 percent. The five member Board of

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<sup>3</sup> Supplemental Response of Lockheed Martin, CC Docket 92-237, NSD File 98-151 (filed April 12, 1999) at page 4. Additionally, Lockheed Martin and Warburg appear to have amended this Amended Request. See Letter of Morrison & Foerster, dated August 26, 1999, CC Docket No. 92-237, NSD File No. 98-151, enclosing a Supplemental Amended Request.

<sup>4</sup> Mitretek herein incorporates its previous comments and ex parte submissions in this Comment.

Directors of NeuStar will include two individuals representing Warburg, the Chairman and Chief Executive Officer of NeuStar (selected by Warburg), and the two trustees of the Warburg/Management trust. Warburg selects the trustees of Warburg/Management trust. The trustees may be replaced by a vote of the three members of the Board of Directors, with Warburg reserving veto authority over any new member. No provision precludes Warburg from adding additional trustees to the Warburg/Management trust or to the Board of Directors of NeuStar.

In comments filed in this docket, Professor Lynn A. Stout ably illustrates that the proposed structure fails any minimal standard demonstrating that the Warburg/Management trust is independent of Warburg.<sup>5</sup> The Amended Request make clear that Warburg has not ceded control over the management and operations of NeuStar and therefore the NANPA. Through its ability to add trustees, appointing or vetoing substitute trustees, to increase the size of the Board of Directors, and to control the compensation of the trustees, Warburg's control of NeuStar is assured. Fundamental rules of corporate organization law that are commonly used to ensure independence have been ignored.

Even apart from the failure of the Warburg/Management trust to reflect independence, is that the Board of Directors of NeuStar remains controlled by Warburg. The Chairman and Chief Executive Officer of NeuStar, named by Warburg, is in fact one who has pursued the Warburg acquisition. Additionally, Warburg appears to preserve its initial ability to name future Chairman and Chief Executive Officers. In form and fact, the Chairman and Chief Executive Officer is not separate and independent from Warburg. Warburg controls the Board of Directors of the entity responsible for the NANPA.

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<sup>5</sup> Comments of Professor Lynn Stout, CC Docket 92-237, NSD File No. 98-151 ( September 3, 1999), attached hereto as Attachment A. Professor Stout was retained on behalf of Mitretek to review the Amended Request.

The Warburg/Management trust agreement itself exempts a range of operations from the trustees' control. The lease of assets, the merger, consolidation or reorganization of NeuStar, and incurring indebtedness in excess of \$10 million dollars, all of which relate to the efficient and effective administration of NANPA, remain within the control of Warburg and the NeuStar management. The trustees are specifically precluded from exercising their judgment in these areas.

Neither the trustees of the Warburg/Management trust or NeuStar's management, nor the Board of Directors are independent. Warburg's substantial telecommunications interest are as much a part of NeuStar as Warburg itself because the trustees and the other members of the Board of Directors are obligated to pursue the economic interests of Warburg. Their fidelity is not to the public interest responsibilities related to the NANPA. As in its previous proposal, Warburg holds a pervasive dominating interest over the management and operations of the NANPA. The law's demand that the North American Numbering Plan Administrator not be aligned with any telecommunications interests is not met.

**NeuStar Not Only Fails the Neutrality Standard But Dilutes the Responsibilities Imposed on the NANPA**

As with the previous proposal, Lockheed Martin and Warburg propose to remedy Warburg's substantial telecommunications holdings by adopting purported safeguards - - information barriers, a Code of Conduct and audits. The proposals impose upon the Commission substantial additional resource demands requiring constant review and decision. The safeguards actually weaken a standard that is presently clear and precise.

The proposed Code of Conduct, rather than assuring a high standard of conduct, raises confusion and contradiction. It states that no shareholder of NeuStar shall have access to user data or proprietary information of telecommunications service providers served by the NeuStar

NANPA.<sup>6</sup> Yet, if 28 percent of NeuStar will be held by its senior management, does that mean that senior management will be barred from examining information obtained by the NANPA and critical to its responsibilities, or is the restriction related to information held by Warburg? The Code of Conduct also states that “NeuStar shareholders will guard their knowledge and information about NeuStar’s operations as they would their own proprietary information.”<sup>7</sup> But the owner of proprietary information has absolute discretion as to what to do with that information. Notably, the provision imposes no fiduciary responsibility on NeuStar shareholders. The Code of Conduct states that no employee of a telecommunications service provider, in whom a NeuStar shareholder has an attributable interest, may also be employed by NeuStar.<sup>8</sup> The inference is that telecommunications service provider employees, employees of entities who use numbering resources, may otherwise be employed by the NANPA.

The so-called quarterly “neutrality review” is vague in substance. It does not assure the reviewer access to any and all information believed necessary for the review. Most significantly, the results of the review are deemed confidential and proprietary information of NeuStar and its shareholders.<sup>9</sup> It strains credulity to assert that a so-called review of how NeuStar adheres to a Code of Conduct purporting to reflect public trust responsibilities, provides any effective mechanism when the review is not publicly available.

Inevitably, Lockheed Martin and Warburg, will seek to clarify the confusion and contradictions presented by the Code of Conduct. That the Code of Conduct is offered as a safeguard to uphold what the law and the Commission’s regulations already require, is further demonstration that NeuStar fails any cursory inquiry regarding its neutrality.

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<sup>6</sup> Amended Request, Code of Conduct, No. 2.

<sup>7</sup> Amended Request, Code of Conduct, No. 4.

<sup>8</sup> Amended Request, Code of Conduct, No. 5.

## **Conclusion**

The Amended Request reflects Warburg's intention to protect its investment. It has injected fundamental elements of corporate organization into a matter of communications policy and failed in all ways to demonstrate that NeuStar has any independence from Warburg's substantial telecommunications holdings. By doing so Warburg has obscured the fundamental precept that the entity responsible for how phone numbers are distributed and to what carriers, be beyond reproach. A critical element of this standard is being independent of the telecommunications industry. An entity, such as Warburg, which has broad financial interests in the well being of numerous telecommunications providers, cannot meet this standard.

This lengthy process has taken its toll at a time when the leadership of the NANPA should be committed to confronting the substantial challenges facing the Commission in ensuring that there are adequate number resources available and that the public is served by the means which this is accomplished. Instead, resources and attention are diverted to convince the Commission that the sale of the NANPA to a substantial holder of telecommunications interests is permissible. The amended request is more appropriately viewed as a waiver of the neutrality standard. Public confidence is undermined and the substantive resolution of the challenges delayed. The amended request should be rejected. Mitretek Systems should be designated the North American Numbering Plan Administrator.

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<sup>9</sup> Amended Request, Code of Conduct, No. 9.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'H. Gilbert Miller', with a stylized, cursive script.

H. Gilbert Miller  
Vice President  
Center for Telecommunications and  
Advanced Technology  
Mitretek Systems  
7525 Colshire Drive  
McLean, Virginia 22102  
703.610.2900

September 7, 1999

## CERTIFICATE OF SERVICE

I hereby certify that on this 7<sup>th</sup> day of September I caused an electronic copy of the foregoing Comment to be filed using the Commission's Electronic Comment Filing System and additional copies to be served by delivery to the Commission's mail room to the following:

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, SW, TW-A325  
Washington, DC 20554

Chairman William E. Kennard  
Federal Communications Commission  
445 12th Street, SW, 8th Floor  
Washington, DC 20554

Commissioner Harold Furchtgott-Roth  
Federal Communications Commission  
445 12th Street, SW, 8th Floor  
Washington, DC 20554

Commissioner Michael Powell  
Federal Communications Commission  
445 12th Street, SW, 8th Floor  
Washington, DC 20554

Commissioner Susan Ness  
Federal Communications Commission  
445 12th Street, SW, 8th Floor  
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Commissioner Gloria Tristani  
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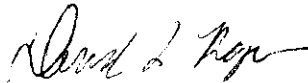
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Washington, DC 20554



## **Attachment A**



GEORGETOWN UNIVERSITY LAW CENTER

Lynn A. Stout  
Professor of Law

September 3, 1999

Ms. Magalie Roman Salas  
Secretary, Federal Communications Commission  
445 12<sup>th</sup> St., SW  
Washington, DC 20554

Re: Comments in Response to Public Notice DA 99-1647,  
*In The Matter of Request of Lockheed Martin Corporation et al.*,  
CC Docket 92-237  
NSD File No. 98-151

Dear Ms. Salas:

Please find enclosed for filing in the above dockets an original and four copies of  
Comments in response to Public Notice DA 99-1647 issued August 17, 1999. Also enclosed is a  
list of those individuals at the Commission who were provided with a copy of the Comments.

Respectfully submitted,

Lynn A. Stout  
Professor of Law

Enclosures

**Comments of Lynn A. Stout  
Professor of Law  
Georgetown University Law Center**

**Before the Federal Communications Commission, Common Carrier Bureau  
September 3, 1999**

Re: Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of Lockheed Martin Communications Industry Services Business from Lockheed Martin Corporation to an Affiliate of Warburg, Pincus & Co. (CC Docket No. 92-237, NSD File No. 98-151) (Response to Public Notice DA 99-1647, August 17, 1999).

**Introduction**

My name is Lynn A. Stout. I am a Professor of Law at the Georgetown University Law Center, where I teach securities regulation and corporate law (see attached *curriculum vitae*). I have been retained by Mitretek Systems to examine the August 16, 1999, Amended Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business (the Amended Request), and the August 26, 1999, Supplemental Amended Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business (the Supplemental Amended Request). In particular, I have been asked to analyze the proposed corporate structure of NeuStar, Inc. (NeuStar), and especially whether the NeuStar board of directors and the trustees of the proposed NeuStar voting trust would be neutral and independent of Warburg Pincus & Co. and its affiliates (Warburg Pincus).

I conclude that neither the NeuStar board of directors nor the NeuStar voting trust would be neutral and independent of Warburg Pincus.

My analysis is based on the facts described in the Amended Request and attached Exhibits A and B, as modified by the Supplemental Amended Request and its attached Exhibit A. These documents describe the proposed restructuring of Lockheed Martin's Communications Industry Services (CIS), which currently serves as the North American Numbering Plan Administrator (NANPA) and the Local Number Portability Administrator (LNPA), into the new corporate entity NeuStar, Inc. A majority of the stock of NeuStar would be beneficially owned by Warburg, Pincus Equity Partners, L.P. ("WPEP") and controlled by a voting trust.

The Amended Request states that this proposed structure "would ensure the continued neutrality of CIS" and "eliminates any possibility that Warburg Pincus could use its ultimate ownership interest in the NANPA, through WPEP, to advantage other telecommunications investments" (Amended Request at pages 1-2). These conclusions are incorrect.

In order for NeuStar to be deemed independent of Warburg Pincus, at a minimum NeuStar would have to be structured so that an absolute majority of NeuStar's current board of directors, and an absolute majority of all successor NeuStar boards, would be independent. To be independent, it is not enough that such directors have no familial or business ties to Warburg Pincus. Warburg Pincus must also give up control over who serves as an independent director. This is difficult to arrange given that Warburg Pincus would own an absolute majority of NeuStar's voting shares. Although it is possible for Warburg Pincus to cede voting control over its shares to an independent voting trust, in order for the trust to be truly independent Warburg Pincus must again give up control over who serves as an independent trustee and how trustees are compensated. For reasons noted below, the proposed restructuring described in the Amended Request does not meet these standards, and none of the changes proposed in the Supplemental Amended Request remedy this fundamental flaw. Thus Warburg Pincus would continue to be able to influence and control both a majority of the voting shares of NeuStar, and a majority of the NeuStar board of directors. Moreover, even if this were not so, the directors and trustees would have no obligation under corporate and trust law to protect NeuStar's neutrality in numbering administration.

1. Warburg Pincus Can Control the NeuStar Shares Held in Trust.

The Amended Request and Supplemental Amended Request state that 59% of the shares of NeuStar would be controlled by an "independent" voting trust. However, the Trust Agreement described in the Amended Request and in Exhibit B does not create an independent trust.

In order for the trust to be independent from Warburg Pincus, two essential criteria must be met. First, after the initial trustees are appointed, Warburg Pincus must cede power to remove them or to determine their successors in the event of removal, resignation, expiration of term, or death. The proposed trust fails to meet this standard for at least three reasons: (a) a simple majority of the NeuStar board of directors can remove a trustee without cause and at any time, and Warburg Pincus can control the NeuStar board of directors (see Section II, below); (b) successor trustees are selected by the vote of a simple majority of the NeuStar board, and again Warburg Pincus can control the board; and (c) according to the Trust Agreement, no trustee can be selected without the approval of a representative of Warburg Pincus, giving Warburg Pincus veto power over the selection of trustees.

The second essential criterion that must be met for the trust to qualify as independent from Warburg Pincus is that Warburg Pincus must be unable to influence the level of compensation received by the trustees. The proposed trust does not meet this standard because the Trust Agreement is silent as to trustee compensation. Thus, the Trust Agreement does not preclude the NeuStar board of directors from determining whether and to what extent the trustees will be compensated. Because Warburg Pincus can control the NeuStar board, Warburg Pincus can control the trustees' compensation.

The trust described in the Amended Request and Supplemental Amended Request thus fails to meet either of the two fundamental requirements for independence from Warburg Pincus and its affiliates. Warburg Pincus can control both who serves as a trustee, and how much

compensation the trustees receive. The trustees accordingly are not independent of Warburg Pincus.

## **II. Warburg Pincus Can Control the NeuStar Board of Directors.**

The Amended Request and Supplemental Request state that NeuStar would have a five-member board of directors, consisting of: NeuStar's Chief Executive Officer (CEO), who would serve as Chairman; up to two direct representatives of Warburg Pincus; and two "independent" directors.

This proposed structure allows Warburg Pincus to control the NeuStar board. In order to be independent of Warburg Pincus, the proposed board would have to be structured so that independent directors made up a clear majority — a minimum of three out of five — of both the initial board, and all successor boards. Moreover, directors are only independent of Warburg Pincus if Warburg Pincus cannot exercise control over their selection. The proposed board described in the Amended Request fails to meet these standards for a variety of reasons.

First, the Amended Request states that Warburg Pincus will have up to two direct representatives on the NeuStar board, and that no "independent" trustee or "independent" director can be elected without the approval of one of these representatives. This arrangement gives Warburg Pincus veto power over all board decisions regarding these fundamental matters.

Second, the Amended Request states that the CEO of NeuStar will serve as Chairman of the NeuStar board. There is no provision requiring the CEO/Chairman to be independent of Warburg Pincus. Indeed, the first proposed Chairman, Jeffrey Ganek, is a Warburg Pincus nominee. Thus Warburg Pincus would initially control a majority of the NeuStar board of directors. Although the Amended Request does not describe how future NeuStar CEOs will be selected, if NeuStar follows the standard practice of selecting officers by vote of a majority of the board, Warburg Pincus could perpetuate its control of a majority of the board.

Third, although the Amended Request states that the NeuStar board would include two "independent" directors, the facts given in the Amended Request and Supplemental Amended Request do not support that claim that these two directors would be independent. Most significantly, the independent directors could only be elected by a majority vote of the NeuStar board, including the affirmative vote of at least one Warburg Pincus representative. Thus (as in the case of the trustees), Warburg Pincus would exercise control over who serves as "independent" directors.

The net result is that Warburg Pincus could enjoy control and influence over a majority, and possibly all, of the members of the NeuStar board. The NeuStar board of directors accordingly would not be independent of Warburg Pincus.

### **III. Other Sources of Warburg Pincus Influence and Control over NeuStar**

In addition to the factors noted above, the Amended Request describes a number of other characteristics of the proposed corporate restructuring that would contribute to Warburg Pincus' ability to influence and control NeuStar.

First, the initial "independent" members of the NeuStar board will be chosen by NeuStar's CEO and Chairman, Jeffrey Ganek. Mr. Ganek is a Warburg Pincus nominee.

Second, all successor "independent" directors must be nominated by the Chairman of the NeuStar Board, who again need not be independent.

Third, any NeuStar director, including any "independent" director, can be removed by the vote of three-quarters of NeuStar's shares including shares in the voting trust which Warburg Pincus can control (see Section I, above).

Fourth, the trustees of the proposed voting trust will not have control over the shares in the trust with regard to "fundamental" corporate changes such as mergers and consolidations, the issuance of new shares, significant acquisitions, and the incurring of material indebtedness.

Fifth, the Amended Request does not provide evidence that NeuStar's Articles of Incorporation, and/or corporate bylaws, cannot be amended to increase the size of the NeuStar board and so dilute the power of NeuStar's "independent" directors.

### **IV. Fiduciary Duties Do Not Require NeuStar's Directors and Trustees To Seek Neutrality in Numbering Administration**


The discussion above focuses on whether the proposed corporate restructuring would effectively insulate NeuStar from the influence and control of Warburg Pincus. I conclude that it would not, and that fundamental aspects of NeuStar's proposed board of directors and voting trust preclude these entities from being deemed independent of Warburg Pincus. Even if this were not so, however, it is important to note that independent NeuStar directors and voting trustees would remain free to favor the economic interests of Warburg Pincus over the general public's interest in the neutrality of the NANPA.

The Amended Request suggests otherwise when it states that "the trustees will have a fiduciary duty to all the beneficiaries of the trust, so their only incentive is to ensure the ongoing success and neutrality of NeuStar." (Amended Request at 9). This statement is not correct. Under the terms of the proposed corporate restructuring and trust, NeuStar's directors and trustees do not owe fiduciary duties to the general public. Rather, they would owe fiduciary duties primarily to NeuStar's shareholders, including Warburg Pincus. NeuStar's directors and trustees accordingly would be under no obligation to ensure NeuStar's neutrality in numbering plan administration. Nor would the directors and trustees be precluded from favoring a particular beneficiary, such as Warburg Pincus, over other beneficiaries where this can be done without affirmatively harming the other beneficiaries.

## **Conclusion**

For the reasons stated above I conclude that the proposed new corporate entity, NeuStar Inc., would not be independent from Warburg Pincus and its affiliates. To the contrary, Warburg Pincus would retain significant ability to influence and control NeuStar. Moreover, even if this were not so NeuStar could not be assumed to be neutral in numbering administration.

Respectfully submitted,



Lynn A Stout  
Professor of Law  
Georgetown University Law Center  
600 New Jersey Avenue, NW  
Washington, D.C. 20001  
202.662.9104  
September 3 1999

## **LYNN A. STOUT**

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600 New Jersey Avenue, NW, Washington, DC 20001  
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E-mail: stout@law.georgetown.edu

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### **PROFESSIONAL POSITIONS**

**Georgetown University Law Center, Washington, DC**  
Professor of Law, 1991 to present

Courses taught: corporate law; securities regulation; law and economics; international securities markets; finance theory and capital markets seminar; jurisprudence of law and economics seminar.

Recent administrative positions: Director, Georgetown-Sloan Project on Business Institutions (overseeing \$2.2 million grant from the Sloan Foundation for research into the economic and social functions of corporations); Faculty Appointments Committee (1998-99); Long Range Planning Committee (1997-99); Director, Working Paper Series on Business, Economics, and Regulation (1997-99); Faculty Advisor, Joint MBA-JD Program (1997-98).

**Eaton Vance Mutual Funds, Boston, MA**  
Director/Trustee, 1998 to present

Independent trustee of fund family with approximately \$35 billion under management (position equivalent to director of a public corporation).

**Harvard Law School, Cambridge, MA**  
Visiting Professor, Spring 2000

**The Brookings Institution, Washington, DC**  
Guest Scholar, 1995

**New York University Law School, New York, NY**  
Visiting Professor, Fall 1994

**George Washington University National Law Center, Washington, DC**  
Professor of Law, 1986 to 1990 (tenured 1989)

**Williams & Connolly, Washington, DC**  
Attorney, 1983 to 1986

**U.S. District Court for the District of Columbia, Washington DC**  
Judicial Law Clerk to the Hon. Gerhard A. Gesell, 1982-1983

## EDUCATION

**Yale Law School**, New Haven, CT

J.D., May 1982

Senior Editor, *Yale Law Journal*

**Princeton University**, Princeton, NJ

Master of Public Affairs, Woodrow Wilson School, May 1982

Woodrow Wilson Fellow

**Princeton University**, Princeton, NJ

A.B., May 1979

*Summa cum laude*, Phi Beta Kappa, Woodrow Wilson School Senior Thesis Prize, National Merit Scholar

## PUBLICATIONS

### Books

CASES AND MATERIALS ON LAW AND ECONOMICS (with David Barnes, West 1992)

Supplemental Series (all with David Barnes, 1992):

ECONOMICS OF CONSTITUTIONAL LAW AND PUBLIC CHOICE

ECONOMICS OF CONTRACT LAW

ECONOMIC ANALYSIS OF TORT LAW

ECONOMICS OF PROPERTY RIGHTS AND NUISANCE LAW

ECONOMIC FOUNDATIONS OF REGULATION AND ANTITRUST LAW

### Articles

*Introduction: Team Production in Business Organizations*, \_\_ Journal of Corporation Law \_\_ (forthcoming 1999) (Symposium on Team Production in Business Organizations)

*Why The Law Hates Speculators: Regulation and Private Ordering in the Market for OTC Derivatives*, 48 Duke Law Journal 701 (1999)

*A Team Production Theory of Corporate Law*, 85 Virginia Law Review 247 (1999) (with Margaret M. Blair)

*How Efficient Markets Undervalue Stocks: CAPM and ECMH Under Conditions of Uncertainty and Disagreement*, 19 Cardozo Law Review 475 (1997) (Symposium on the Essays of Warren Buffett)

*Technology, Transactions Costs, and Investor Welfare: Is A Motley Fool Born Every Minute?* 75 Washington University Law Quarterly (1997) (Symposium on Markets and Information Gathering In An Electronic Age: Securities Regulation in the 21st Century)

## **PUBLICATIONS, CONTINUED**

*Irrational Expectations*, 3 Legal Theory 227 (1997) (Symposium on Rationality and Cognition)

*Type I Error, Type II Error, and the Private Securities Litigation Reform Act*, 38 Arizona Law Review 711 (1996) (Symposium on the Private Securities Litigation Reform Act of 1995)

*Insurance or Gambling? Derivatives Trading In A World of Risk and Uncertainty*, 1996 Brookings Review 39 (Winter)

*Are Stock Markets Costly Casinos? Disagreement, Market Failure, and Securities Regulation*, 81 Virginia Law Review 611 (1995)

*Agreeing To Disagree Over Excessive Trading*, 81 Virginia Law Review 751 (1995)

*Betting The Bank: How Derivatives Trading Under Conditions of Uncertainty Can Increase Risks and Erode Returns in Financial Markets*, 21 Journal Corporation Law 53 (1995) (Symposium on Derivative Securities)

*Some Thoughts on Poverty and Failure in the Market for Human Capital*, 81 Georgetown Law Journal 1947 (1993) (Symposium on Poverty Law and Policy)

*Strict Scrutiny and Social Choice: An Economic Inquiry into Fundamental Rights and Suspect Classifications*, 80 Georgetown Law Journal 1787 (1992) (Symposium on Positive Political Theory and Public Law)

*Are Takeover Premiums Really Premiums? Market Price, Fair Value, and Corporate Law*, 99 Yale Law Journal 1235 (1990)

*The Unimportance of Being Efficient: An Economic Analysis of Stock Market Pricing and Securities Regulation*, 87 Michigan Law Review 613 (1988)

Note, *The Case for Mandatory Separate Filing by Married Persons*, 91 Yale Law Journal 363 (1981)

## **RECENT SPEECHES, TESTIMONY, AND OTHER PUBLIC APPEARANCES**

1999: Olin Conference on Evolution and Legal Theory, Georgetown University Law Center

Sloan Conference on Team Production, Georgetown University Law Center

Roundtable Conference on the Year 2000 Computer Problem, New York University

Stern School of Business

Guest Speaker, Fordham Law School

Annual Meeting of the Socioeconomics Section, Association of American Law Schools

- 1998: Testimony before the U.S. Senate Banking Committee, Subcommittee on Financial Services and Technology, on Disclosing Year 2000 Readiness  
 Guest Speaker, American University Law School  
 Sloan Conference on Corporate Governance, Columbia Law School  
 Annual Meeting of the American Association for Law and Economics  
 Business Associations Workshop, Association of American Law Schools  
 Annual Meeting of the Socioeconomics Section, Association of American Law Schools
- 1997: Guest Speaker, Northwestern University School of Law  
 Brookings Institution Conference on Human Capital and the Theory of the Firm  
 Testimony in SEC v. Seaboard Investment Advisers, Inc., U.S. District Court, E.D. Va.  
 Biannual Meeting of the Institute for Quantitative Research in Finance ("Q Group")  
 University of Iowa Law School Law and Economics Workshop  
 Olin Conference on International Economic Regulation, Georgetown University Law Center  
 Olin Conference on Markets and Information Gathering In An Electronic Age: Securities Regulation in the 21st Century, Washington University Law School  
 Guest Speaker, Cornell Law School  
 Annual Meeting of the Socioeconomics Section, Association of American Law Schools
- 1996: Annual Meeting of the Southern Economic Association  
 University of Michigan Law School Law and Economics Workshop  
 Olin Conference on Rationality and Cognition, Georgetown University Law Center  
 Symposium on the Essays of Warren Buffet, Cardozo Law School
- 1995: Conference on the Private Securities Litigation Reform Act, Arizona Law School  
 Toronto Law School Law and Economics Workshop  
 Harvard Law School Law and Economics Workshop  
 Testimony in U.S. v. Mitchell Hammer, U.S. District Court, S.D. Fla.  
 Guest Speaker, Vanderbilt Law School  
 Annual Meeting of the American Association for Law and Economics  
 Conference on Economic Analysis of International Law, George Mason School of Law  
 Annual Meeting of the Public Choice Society  
 Guest Speaker, University of San Diego Law School

## **PROFESSIONAL ASSOCIATIONS**

ABA Committee on Federal Regulation of Securities  
 AALS Section on Law and Economics (Chair, 1994)  
 AALS Section on Business Associations (Executive Council, 1992-94 and 1997-99)  
 American Law and Economics Association  
 Public Choice Society  
 Bar of the District of Columbia  
 Bar of the Commonwealth of Virginia